



Kapiolani Park Trustees
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

KAPIOLANI PARK TRUSTEES

Donovan M. Dela Cruz, Chair
Ann H. Kobayashi, Vice-Chair
Todd K. Apo, Trustee
Romy M. Cachola, Trustee
Charles K. Djou, Trustee
Nestor R. Garcia, Trustee
Barbara Marshall, Trustee
Gary Okino, Trustee
Rod Tam, Trustee

MINUTES

REGULAR MEETING
THURSDAY, SEPTEMBER 6, 2007

COUNCIL COMMITTEE MEETING ROOM
2ND FLOOR, HONOLULU HALE
HONOLULU, HAWAII 96813

CALL TO ORDER

The meeting of the Kapiolani Park Trustees was called to order by Trustee Chair Donovan M. Dela Cruz at 2:10 p.m. Trustees Apo, Cahola, Djou, Garcia, Kobayashi, Marshall, Okino, and Tam were present at the meeting.

STAFF PRESENT

Kimberly Ribellia, Senior Advisor to Committee Chair Dela Cruz
Lloyd Yoshioka, Attorney, Office of Council Services
Lori Sunakoda, Deputy, Department of the Corporation Counsel, assigned Deputy to the Kapiolani Park Trustees
Elena Lao, Committee Clerk, Office of the City Clerk

ORDER OF BUSINESS

APPROVAL OF MINUTES

The minutes of the Kapiolani Park Trustees meeting on April 28, 2005 were approved as circulated.

AYES: APO, DJOU, GARCIA, KOBAYASHI, MARSHALL, DELA CRUZ – 6.
NOES: None.
EXCUSED: CACHOLA, OKINO, TAM – 3.

FOR DISCUSSION

1. OVERVIEW OF KAPIOLANI PARK

Brief overview of the history of Kapiolani Park and the establishment of the Trust, and the roles and responsibilities of the Trustees.

Administration/Others

Lori Sunakoda, Deputy, Department of the Corporation Counsel

Deputy Sunakoda highlighted historical information on the establishment of the Kapiolani Park Trust as follows:

- December 22, 1876: The Kapiolani Park Association, a private corporation, was established for the purpose of beautifying a tract of land within the vicinity of Honolulu as a place of public resort and healthful exercise, recreation, and amusement.
- June 6, 1896: The Legislature enacted Act 53, which codified an agreement by the Republic of Hawaii, the Kapiolani Park Association, and William G. Erwin, whereby land comprising Kapiolani Park was permanently set apart as a free public park and recreation ground. Act 53 also established the Honolulu Park Commission, a public entity consisting of six trustees; three appointed by the President of the Republic of Hawaii and three appointed by the Kapiolani Park Association.
- April 19, 1913: The Legislature of the Territory of Hawaii enacted Act 163, which directed the Honolulu Park Commission to convey Kapiolani Park to the Territory of Hawaii as a public park and recreation ground.
- July 1, 1913: Governor Walter Frear signed Executive Order No. 22, which transferred control and management of Kapiolani Park to the City and County of Honolulu as trustee.
- March 22, 1988: The Hawaii Supreme Court issued a decision ruling that Kapiolani Park is a public charitable trust and members of the Honolulu Park Commission are the Trustees.
- June 28, 1991: The State Circuit Court issued a decision and order ruling that the re-creation of a Park Commission was not necessary as members of the City Council shall serve as Trustees, subject to the supervision of the court and must file a report with the court every three years.

The following individual testified:

Michelle Matson

2. REVIEW OF THE KAPIOLANI REGIONAL PARK MASTER PLAN

Administration/Others

Eugene Lee, Director, Department of Design and Construction (DDC)
Lori Sunakoda, Deputy, Department of the Corporation Counsel
Dawn Spurlin, Deputy, Department of the Corporation Counsel
Michael Miyabara, Consultant, Miyabara Associates

Director Lee reported that the current Kapiolani Regional Park Master Plan was approved in 1982. The Plan was subsequently revised and informally updated in 1992. Miyabara Associates was contracted in 1998 to develop a Revised Master Plan to reflect the changing needs of the park.

Mr. Miyabara presented a brief update on the current status of the Master Plan, which has been reviewed and approved by the Department of Parks and Recreation (DPR) at the end of last year. An Environmental Assessment (EA) was prepared and published in June 2007. Responses to comments received during the review period are being prepared. The final EA is anticipated for submittal by the end of September 2007.

Mr. Miyabara explained the principal concept in preparing the Master Plan update was to preserve the historic theme and open-space character, while retaining the diversity of recreational uses and leisure activities that currently exist in the park. The recommended park improvements are as follows:

- Renovate and upgrade the existing maintenance facility located between Leahi and Paki Avenues.
- Acquire remnant lots between Leahi and Paki Avenues, as they become available, as a long-term goal to consolidate the area into a unified park.
- Road improvements along Paki Avenue, from Monsarrat Avenue to Ponī Moi Road, such as marked parking spaces.
- Designate areas for bicycle and moped parking throughout the park.
- Improve accessibility throughout the park for ADA conformance.

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- Reconstruct the current parking area at the former golf driving range site and demolish existing structures to replace with a new comfort station.
- Reconfigure the existing softball fields in the central area to accommodate portable backstops for safe play when multiple games are held.
- Underground overhead utilities along Monsarrat, Kalakaua, and Paki Avenues, and portions of the Honolulu Zoo parking area.
- Replace the existing Elks Field with a picnic area due to safety reasons.
- Widen sidewalks along Kalakaua Avenue to accommodate more users.
- Create a new entrance to the Honolulu Zoo and a new entry feature at the corner of Kalakaua and Kapahulu Avenues.

Mr. Miyabara further explained that the planning and design study for the Natatorium is under a separate contract by a different consultant and will be added into the Master Plan update upon completion.

In response to questions from the Trustees, Mr. Miyabara commented that most of the parks' boundary coincides with the Trust boundary. The majority of the proposed improvements are along Paki Avenue. He added that in preparing the Master Plan, he was fully aware of the terms of the Trust and court decisions in regard to the usage of the park.

Trustee Cachola asked if the roadways within the Trust boundary and the Waikiki Shell have been dedicated to the City. Deputy Sunakoda noted she does not recall documentation on prior requests for approval by the Trustees to proceed with any type of road maintenance or repairs. There should be no problems, as long as the proposed work does not have any adverse impact upon the Trust property and the park. She will look into past practice by the Trustees in regards to previous road improvements within the Trust boundaries, and whether or not the roadways and the Waikiki Shell have been dedicated to the City.

Trustee Garcia raised concerns as to why the Honolulu Zoo and the Waikiki Shell were not included in the Master Plan update. He emphasized that the Honolulu Zoo and Waikiki Shell are part of the heart of Kapiolani Regional Park, and thus, should be included in the Master Plan update. All possible impacts to the park and its surrounding areas should be the scope of the Master Plan update.

Mr. Miyabara explained that in developing the Master Plan update, it was assessed that improvements to the park would not have significant impacts to the

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Honolulu Zoo or the Waikiki Shell. The current use of the two facilities would be unaffected, and thus, did not require any changes in the Master Plan.

Concerns and questions were raised regarding the Trustees' role and why their approval is not required in finalizing the Master Plan update.

Deputy Sunakoda explained that the court appointed current City Council members to serve as Trustees in enforcing the terms of the Kapiolani Park Trust. The Trustees have the authority, responsibility, and prerogative to do what is in the best interest of the Trust beneficiaries, who are the general public. The purpose of the Trustees is to ensure the Trust is administered in conformance with the provisions of the court orders.

In regards to the Master Plan, Deputy Sunakoda noted the environmental review process, as provided in the Hawaii Revised Statutes, does not mandate further review by an entity other than the designated department. The proposing agency for the project determines whether or not there is a significant environmental impact. She noted that the proposed improvements to the park are not in any way contrary to the terms of the Trust; and thus, there would be no basis for the Trustees to disapprove the Master Plan. The Trustees have the option to initiate action on its own or request instruction from the court for clarification as to whether or not the proposed Master Plan conforms to the terms of the Trust.

Director Lee stated that when the Master Plan project was initiated, the intent was to separate jurisdiction between the DPR, which manages the park, and the Department of Enterprise Services (DES), which manages the Honolulu Zoo and the Waikiki Shell. The question had been looked at previously and it is his understanding that the Trustees do not need to approve the Master Plan.

Trustee Apo questioned the division of responsibilities for daily operations and policy decision-making between the DPR and the Trustees. He pointed out the Trustees' fiduciary duty, as ordered by the court, to decide on policy issues relating to the provisions of the Trust, which should include the approval process of the overall Master Plan for Kapiolani Park. The Trustees do not have the ability to delegate its fiduciary obligation to any other City entity.

Trustee Marshall questioned whether or not the Trustees would require outside private counsel to advise the Trustees. She emphasized that the environmental review process determines the environmental impact of the Master Plan; it does not determine conformance with the Trust terms.

In response to questions regarding legal representation, Deputy Sunakoda explained that she is assigned by the Corporation Counsel to represent the

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Trustees of the Kapiolani Park Trust. She does not represent the City Administration in relation to the Trust. She also clarified that she is not assigned to represent the DPR, the DDC, nor the DES. She is, however, assigned to represent the Department of Planning and Permitting in various matters.

Deputy Spurlin, who represents the DPR, explained that if the Trustees find the Master Plan to be inconsistent with the terms of the Trust, they have the right to notify the executive branch. It would then be incumbent upon the Administration to address the violations of the Trust. The extent of the Trustees' authority in reviewing the Master Plan is based on its compliance with the terms of the Trust, and not on specific schematics. The 1991 court order ruled that the role of the Trustees shall be limited to enforcing the provision of the Trust, such as ensuring that portions of the park are kept within the Trust and that lands are used solely for park purposes in accordance to the Trust.

In response to Trustee Apo, Deputy Spurlin affirmed that if the City Council has issues with components of the Master Plan and its implementation, then it could be dealt with in budget proceedings.

Trustee Kobayashi emphasized the need for the Trustees to have a say in the Master Plan approval process, whether it is consistent with the Trust or not.

The following individuals testified in opposition of the Master Plan:

1. Jack Gillmar, Kapiolani Park Preservation Society
2. Bert Narita, Diamond Head/Kapahulu/St. Louis Neighborhood Board
3. Michelle Matson, Kapiolani Park Advisory Council
4. Carol Hopkins, Kapiolani Park Preservation Society

In response to comments made in public testimony, Deputy Sunakoda and Deputy Spurlin addressed concerns regarding the alteration of Trust boundaries along Kapahulu Avenue. In 1991, the court required the State and City to replace lands used for non-Trust purposes, specifically the site of the fire station. The land swap transaction eventually took place in 1998, in an amended stipulation filed in the State Circuit Court to revise the subdivision boundaries for the parcels of land encumbered by the Kapiolani Park Trust. In the exchange, the City ended up substituting more land into the Trust than negotiated.

In response to Trustee Okino, Deputy Sunakoda confirmed she has reviewed the Master Plan in terms of appropriate and recreational uses within Trust lands. She also emphasized that prior court orders did not expressly prohibit commercial activity, otherwise, the court would have issued a ruling in relation to commercial activity at the Waikiki Shell and Honolulu Zoo.

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Deputy Sunakoda expressed that she understands the Trustees' concerns and asked for time to confer with the Corporation Counsel and to research whether there is a mechanism for which the Trustees would be able to undertake the role that has been suggested. She will also find out which government entity gives the final approval for implementation of the Master Plan.

Related communications:

D-678	Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board
M-1064	Gerald Park, Urban Planner, transmitting Draft Environmental Assessment for Kapiolani Regional Park Master Plan Update
M-1186	Michelle S. Matson, President, Kapiolani Park Advisory Council
M-1187	Dale Evans
M-1188	Daisy Murai
M-1189	Jack Gillmar, Secretary, Kapiolani Park Preservation Society
M-1191	Miyabara Associates, transmitting summary of Kapiolani Regional Park Master Plan Update

FOR ACTION

3. KAPIOLANI PARK TRUSTEES' TRI-ANNUAL REPORT (COMMUNICATION D-664)

Administration/Others

Lori Sunakoda, Deputy, Department of the Corporation Counsel

Deputy Sunakoda explained that a tri-annual report has been drafted for the Trustees' review and approval, pursuant to the 1991 court order requiring the submittal of a report to the Probate Court every three years. The draft report provides the court with an update of any significant event affecting the Trust over the last three-year period. The report includes information on pending litigation matters involving the Trustees' application for instruction from the court relating to the art fence, art zoo fence and craft fairs. She also noted that the Trustees' response to the Attorney General's response to the application for instruction is due on September 28, 2007, the same date as the tri-annual report deadline.

Trustee Apo requested the tri-annual report to include concerns raised about the role of the Trustees in regards to approving the Kapiolani Park Master Plan, as well as the Master Plans for the Honolulu Zoo and Waikiki Shell.

Trustee Chair Dela Cruz requested the draft report be revised and circulated to the Trustees for review before it is finalized for signatures.

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In response to Trustee Cachola's questions regarding consequences for not approving the report, Deputy Sunakoda stated the Trustees would be in violation of the 1991 court order, which mandated the Trustees to submit a report every three years. The court could impose sanctions, unless there is a valid reason not to submit the report within the given timeframe. A supplemental report could be submitted as long as the initial report is filed in court by September 28.

The following individuals testified in opposition of the proposed tri-annual report (Communication D-664):

1. Jack Gillmar, Kapiolani Park Preservation Society
2. Carol Hopkins

Trustee Garcia expressed he would not sign off on the report as he reiterated concerns regarding the Master Plan. He also restated concerns that the Honolulu Zoo and the Waikiki Shell, which are major components and central to the integrity of the park, are not included in the Master Plan.

In response to Trustee Apo, Deputy Sunakoda will amend the report to reflect that the Master Plan was presented to the Trustees and questions were raised about the Trustees' authority in approving the Plan. She will also look into the query of whether or not the Kapiolani Park Trustees is subject to the Sunshine Law, since the Trustees were assigned by the court and not by Ordinance or City Charter.

Trustee Chair Dela Cruz recommended adoption of the tri-annual report, with the condition it would be amended to reflect earlier discussions and sent to the Trustees for review. If significant concerns arise, then another meeting would be held to address further changes to the report prior to September 28, 2007.

Trustee Apo moved and Trustee Tam seconded the motion to adopt the tri-annual report (Communication D-664) with the condition that the report incorporates the discussion held in the Trustees' meeting of September 6, 2007.

Communication D-664 adopted.

AYES: APO, CAHOLA, GARCIA, KOBAYASHI, OKINO, TAM, DELA CRUZ (Chair) – 7.
NOES: None.
EXCUSED: DJOU, MARSHALL – 2.

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Related communications:

- D-664 Lori Sunakoda, Deputy, Department of Corporation Counsel,
 transmitting the proposed sixth tri-annual report of the Kapiolani
 Park Trustees.
M-1190 Jack Gillmar, Secretary, Kapiolani Park Preservation Society

EXECUTIVE SESSION

At 3:50 p.m., the Trustees resolved into Executive Session pursuant to Hawaii Revised Statutes Section 92-5(a) (4), to consult in a closed meeting with the attorneys for the Kapiolani Park Trustees on questions and issues pertaining to the Trustees' powers, duties, privileges, immunities and/or liabilities. (Ayes: Apo, Cachola, Garcia, Kobayashi, Okino, Tam, Dela Cruz – 7; Noes: None; Excused: Djou, Marshall – 2.)

4. IN THE MATTER OF THE KAPIOLANI PARK TRUST (T. NO. 03-1-0018)

Issues pertaining to the Petition for Instructions regarding the Zoo Art Fence and Craft Fairs filed in the case entitled IN THE MATTER OF THE KAPIOLANI PARK TRUST (T. NO. 03-1-0018).

Administration/Others

Lori Sunakoda, Deputy, Department of the Corporation Counsel

There was no public testimony.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:04 p.m.

Respectfully submitted,



DENISE C. DE COSTA
City Clerk

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DATE APPROVED

2/11/2009